

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MAIL PROCESSING NETWORK RATIONALIZATION
SERVICE CHANGES, 2011

Docket No. N2012-1

**UNITED STATES POSTAL SERVICE
REPLY TO COMMENTS REGARDING SCHEDULING
AND OTHER PROCEDURAL MATTERS**

The United States Postal Service hereby replies to the comments and statements of the following parties offered in response to the Presiding Officer's solicitation of scheduling and other procedural proposals at the January 4, 2012 pre-hearing conference (Tr. Vol. 1 at 21): the American Postal Workers Union (APWU), the National Association of Letter Carriers (NALC), the National Postal Mail Handlers Union (NPMHU), and the Public Representative (PR).

I. Discovery On The Direct Case of the Postal Service

A. The 45-Day Proposal

Three of the aforementioned intervenors request that the Commission permit discovery on the Postal Service's direct case for at least 45 days from the Commission's issuance of a scheduling order, as opposed to the 30 days suggested by the Presiding Officer at Tr. Vol. 1 at 21. APWU Comments at 2, NALC Statement at 1, PR Notice at 3. The Postal Service considers the continuation of discovery on its direct case for another 30 days after the issuance of a scheduling order in this docket to be reasonable. Assuming such an order issues as early as Wednesday, January 11, that would permit parties until Friday, February 10 to continue to propound discovery requests -- giving them a total of 67 days after the filing of the Request. The Postal Service observes that parties in Docket No. N2010-1 were scheduled to conduct

discovery on its Docket No. N2010-1 direct case for 71 days after the Request in that docket was filed (March 30 to June 9, 2010). See Presiding Officer's Ruling No. N2010-1/1 (April 28, 2010). That docket and the current one share a comparable level of substantive complexity, justifying a comparable discovery period. If expedition in the current case merely limits discovery on the direct case of the Postal Service to 67 days, the only parties likely to suffer are those who have not approached their responsibilities with the diligence anticipated by Rule 24(c).

B. The NPMHU Alternative Proposals

1. The "Requisite Critical Mass" of AMPs Standard

NPMHU argues for a more complicated schedule for discovery on the Postal Service's direct case. In its initial proposal, NPMHU asserts that such discovery on the Postal Service's direct case should remain open for at least 30 days following the publication of a "requisite critical mass" of the several hundred facility-specific Area Mail Processing (AMP) operational consolidation studies for which decisions are pending during the months ahead.¹ At page 5, fn. 4 of its Statement, NPMHU sketches out a list of AMP consolidations that, in its view, would be included within the "requisite critical mass." The union then both defers to "the Commission's informed judgment" of what constitutes such a critical mass and reserves to itself, at fn. 6 of its Statement, the right to argue later that some subset of completed AMP studies constitutes a "requisite critical mass" based on, but not limited to, such factors as whether it includes "the

¹ At the pre-hearing conference, Postal Service counsel expressed his understanding that a number of several hundred pending AMP proposals would be decided upon in the next several months. Tr. Vol. 1 at 41. In the interest of even further clarity, counsel has consulted further with postal management and can report the expectation that at least a majority of those proposals will be decided upon in late January and early February 2012. As soon as obligatory notice of each decision is disseminated to postal unions and employee associations, each decision will be made public with copies expeditiously finding homes in Docket No. N2012-1 library references.

largest facilities, population centers, and geographical areas." Thus, the APMHU obviously intends to focus considerable attention on what constitutes a sufficient critical mass before even getting to the content of any particular study or studies.² Conclusion of discovery on the Postal Service direct case and the entire case schedule would be contingent upon the resolution of disputes about what constitutes a "requisite critical mass" of AMP decisions in the eyes of the various beholders who have intervened in this docket.

To bolster its argument for a protracted discovery schedule, NPMHU focuses on uncertainty of the precise contours of the future consolidated mail processing network, arguing at page 3 that the Postal Service may conclude "that some substantial number of the proposed consolidations currently under review are infeasible and will not be pursued, which would of course whittle away at the projected cost savings."³

Broadly speaking, the Postal Service's direct case requests review of changes in the number of expected days-to-delivery and mail entry that would create the opportunity to implement substantial consolidation of the mail processing network to bring operating costs more in line with declining volumes and revenues, and mail mix changes. The parties do not argue that there is uncertainty about the nature of the service changes at issue. The Postal Service describes the factors motivating its decision to pursue the service changes. It provides an estimate of the operational cost

² As such, it seems clear that the APMHU's real objective is delay in and of itself.

³ In rebuttal to such an argument, the Postal Service can only encourage NPMHU to review the more than two dozen Office of Inspector General post-implementation audits of AMP decisions issued since 2008 for the OIG's assessment of the tendency of AMP studies to understate cost savings. The Commission's advisory opinion does not hinge on whether the net annual benefit to the Postal from the service change might be \$2.0 or \$2.2 billion instead of \$2.1 billion. Irrespective of which estimate the Commission opines is most likely closest to the mark, the core of the Commission's opinion is whether the nature of the resulting postal services is consistent with applicable policies of title 39.

savings that could result from full-up implementation of the changes. The Postal Service seeks an advisory opinion from the Commission regarding whether the proposed changes in the nature of service would be consistent with applicable policies of title 39 identified in its Request.

Determination of whether the service changes would be consistent with applicable policies does not require that service changes achieve any particular threshold dollar savings in proportion to some degree of change in service. As the Commission's opinions in Docket Nos. N2006-1 and N2011-1 demonstrate, it is not necessary for the aggregate cost savings to be estimated in order for the Commission to offer an opinion regarding whether the proposed changes in the nature of service are consistent with applicable policies of title 39. The core question raised by the Request in the instant docket is whether it is appropriate under title 39 to pursue the service changes proposed by the Postal Service and thereby effectuate operational changes that achieve cost savings which improve the Postal Service's very unstable financial prospects.

Accordingly, it is immaterial whether the net cost savings expected to result from the service changes under review are (a) estimated in the aggregate based on the general operational change concept and cost analysis presented in the Postal Service's direct testimony, (b) on the basis of a different methodology incorporating only the cost savings estimates generated by the several hundred individual facility-specific AMP studies underlying operational consolidation decisions expected to be implemented

beginning as early as the middle of May 2012, or (c) whether those two approaches produce different and/or reconcilable cost estimates.⁴

Contrary to the assertions at pages 2-3 of NPMHU's Statement, the essential question in this docket – whether the service changes conform to applicable statutory factors – can be resolved in the absence of absolute certainty regarding the aggregate or facility-specific cost savings expected to be achieved. A valuable and credible opinion can be rendered in the absence of certainty whether operations in facility A as opposed to B or Z will be consolidated, when it is clear that the guidelines for consolidation require that the resulting network be designed to permit achievement of the proposed service standards. This is amply demonstrated by the Commission's review of the Postal Service's Docket No. N2006-1 Request involving service changes anticipated to result from systemwide mail processing operational consolidations. Likewise, it was not necessary for the Commission to know with certainty in Docket No. N2010-1 all of the operational changes that would be implemented to effectuate the elimination of Saturday street delivery before concluding whether such a change in service would conform to applicable statutory policies.

NPMHU argues that if "this proceeding is to be meaningful and fair, the Commission and intervenors must be able to question the Postal Service on its

⁴ The NPMHU expresses concern that "at least 48 AMP studies are now overdue under the schedule established by Postal Handbook 408, which provides that a decision should be made within 43 days of the public hearing" (while also asserting that the Postal Service should be held "to its own schedule in releasing these studies" at 6). Notwithstanding the NPMHU's citation to pages 3-5 of the USPS Handbook PO-408, the Commission will observe no requirement there that a final agency decision in response to an AMP proposal be made within 43 days of the public meeting. Prudent management requires the establishment of guidelines for the completion of agency decision-making. The word *Guidelines* is used intentionally in the title of the USPS Handbook PO-408. Thus, a final agency AMP decision is not *late* because it is not made within 43 days of the public meeting. USPS Handbook PO-408 establishes targets for the completion of various stages of the internal administrative review process, but preserves flexibility in the completion of the process on a case-by-case basis to ensure that quality decision-making is not sacrificed in favor of assembly-line decision-making.

anticipated cost savings" Outstanding discovery and information requests in this proceeding provide evidence that the Commission and other intervenors are already able to submit questions already seeking clarification of the costing testimony.⁵

To the extent that an initial wave of Docket No. N2012-1 related AMP decisions is published beginning in late January, the parties should be eminently capable of conducting a reasonable amount of discovery by February 10. This conclusion is reinforced by the Postal Service's expectation that it will file copies of the overwhelming majority of the approximately 180 pre-Docket No. N2012-1 AMP decisions made since the beginning of 2008 by the end of the current week. Reasonable discovery on this first set of decisions that explores issues of the type raised by the Request in the instant docket will create the opportunity for parties to take an economical and expeditious approach to discovery regarding the late January/early February Docket No. N2012-1 related AMP decisions.

At page 5, NPMHU argues that it should be permitted to "test the feasibility of the [Postal] Service's realignment plan and to determine to what extent the cost savings anticipated by the [Postal] Service will actually materialize and at what cost to the efficient delivery of mail." NPMHU thus appears to express its view that the purpose of this docket goes beyond the Commission offering non-binding advice about the compatibility of the proposed service changes with applicable policies of title 39; instead it argues that the scope of the current docket extends to determining whether management is capable of executing the operational changes associated with the

⁵ There presently is no impediment to parties asking in discovery whether the proposed realignment is expected to be achieved "without degrading the efficiency of postal operations beyond that currently anticipated by the Postal Service." However, one might hope that the inquiry is rephrased so as to clarify exactly what information is sought.

proposed service changes and measuring the resulting cost savings and service impacts thereafter. Such assertions make it eminently clear that the Commission will need to exercise a firm hand guiding the parties toward discovery and litigation strategies which are compatible with the limited advisory role established under section 3661 for the Commission; otherwise, the unions' interest in broader agendas and oversight not within the scope of section 3661, and concomitant delay, will ensue.

Despite (1) being formally briefed by the Chief Operating Officer of the Postal Service on August 9, 2011, of its intent to pursue the network rationalization initiative by (2) submitting a Request for an advisory opinion to the Commission, (3) notwithstanding NPMHU's intervention in this docket on December 7, 2011, and (4) notwithstanding the directive in Rule 24(c) that parties submit discovery requests at the earliest possible time, NPMHU has yet to propound its first discovery request. If Rule 24(c) is to have meaning, it cannot be that the litigation schedule is driven by those whose approach to discovery is the least engaged among otherwise active participants in the proceeding.

2. NPMHU's Alternative 74-Day Proposal

As an alternative to its proposal for 30 days of discovery after a "requisite critical mass" of AMP decision-making is achieved, NPMHU proposed that parties be permitted to conduct discovery on the Postal Service direct case through February 17, 2012 -- giving intervenors 74 days of discovery after the filing of the Request to complete discovery on the Postal Service's direct case. If expedition in the instant case results in discovery on the Postal Service's direct case being three calendar days longer than in Docket No. N2010-1, then NPMHU, which to-date has yet to initiate any discovery, will have succeeded in turning the concept of expedition on its head. If the Commission

deems extension of discovery beyond February 10 as justified for the purpose of exploring some of the AMP decisions expected to be published in the weeks and days leading up to the date, discovery on USPS-T-1 through USPS-T-13 beyond February 10 should not be justified on that same basis for the sake of compensating for a lack of due diligence to conduct discovery on the testimony filed on December 5.

At page 4 of its Statement, NPMHU expresses concern that the Postal Service has not committed to making the documents underlying each final AMP decision available in the record of this proceeding upon their completion." NPMHU's expression of concern appears to be founded on a failure to consider the precedential value of Docket No. N2006-1. From that case, parties should presume that when upcoming final agency AMP decisions are made and collective bargaining agreement notice obligations are fulfilled, the Postal Service will fulfill its obligation to file copies of those decisions in the instant docket expeditiously, subject to the terms of section 504(g).⁶

C. APWU Has Misconstrued The Postal Service's Remarks

On page 4 of its Comments, APWU characterizes the Postal Service as having asserted during the January 4 pre-hearing conference that "discovery [in Docket No. N2006-1] moved forward without production of . . . [the relevant] AMPs." The Postal Service made no such assertion. To the contrary, the record in Docket No. N2006-1 includes copies of various AMP decisions made before and during the course of litigation. The view expressed by the Postal Service at the pre-hearing conference was that the Commission was able to issue an advisory opinion in Docket No. N2006-1

⁶ At page 4 of its Comments filed on January 6, APWU observed that, as of that date, the Postal Service had yet to file its response -- due today -- to Question 8d of Presiding Officer's Information Request No. 1 for copies of all Area Mail Processing studies performed since 2008. Those and other documents responsive to Question 8 are being organized into library references for filing this week.

regarding the nature of the service changes expected to result from pursuit of the Evolutionary Network Development initiative without knowing, before the conclusion of litigation, the results of each of the numerous AMP consolidation studies that were then expected as part of that initiative. And the Postal Service maintains that the same is in true of Docket No. N2012-1. See Docket No. N2012-1, Tr. Vol. 1 at 25. As emphasized by the Postal Service at the January 4 pre-hearing conference, the Docket No. N2011-1 advisory opinion stands as proof that the Commission can fulfill its section 3661 service change analysis advisory role without knowing the outcome of each of the potential facility closure determinations associated with the service changes under consideration. *Id.*

Contrary to the APWU's assertion, the fact that the potentially nationwide service changes at issue in Docket No. N2006-1 were expected to have less impact than the nationwide changes at issue in the instant docket, by itself, has no bearing on how much time should be allotted for discovery to discern the scope and extent of the changes currently under review. This conclusion is all the more compelling where, as in the instant docket, the nature of the proposed service changes within the contiguous 48 states is (a) clearly nationwide, (b) described clearly and in great detail, and (c) the subject of a concurrent notice-and-comment rulemaking that began well in advance of the Request's filing.

Filing Of Intervenor Rebuttal Testimony

The Public Representative at page 4 of its Notice and the APWU at page 3 of its Comments both propose at least a 60-day interval between the completion of oral cross-examination on the Postal Service's direct case and the filing of intervenor

rebuttal testimony, to allow for what both characterize as suitable *quantitative* rebuttal testimony. Both parties argue that allotting less time will likely limit them to offering *qualitative* rebuttal testimony instead.

In conjunction with its proposal to extend discovery on the Postal Service's direct case through February 17, NPMHU proposes that intervenors be given until April 2 to file one set of rebuttal testimony responding to the Postal Service's direct case. NPMHU then proposes that parties be given 75 days⁷ after a "requisite critical mass" of AMP decisions is determined to have been published to file testimony rebutting the requisite critical mass of AMP decisions and "any revised cost savings estimates by the Postal Service." NPMHU Statement at 6. Thus, NPMHU envisions two phases of intervenor rebuttal testimony, creating the potential for two phases of surrebuttal testimony.

The basis for NPMHU's anticipation of revised cost savings by the Postal Service is unclear. As this case proceeds, it can be anticipated that a number of facility-specific cost estimates, developed using the USPS Handbook PO-408 review process, will emerge. It should be noted that the Handbook PO-408 estimation methodology differs from that underlying the Request in this docket; hence it is unrealistic to expect that the systemwide aggregate cost savings estimates in USPS-T-8 and USPS-T-9, which do not presume particular facility-specific consolidation outcomes, will lend themselves to reconciliation. Rather, one would expect that a systemwide estimate projected from an as yet undefined "requisite critical mass" of facility-specific AMP cost savings estimates developed on the basis of the USPS Handbook PO-408 process would not reconcile, although it would constitute an alternate estimate of impact. In light of the expectation

⁷ This would be followed by line-by-line discovery on each AMP decision document would be permitted.

that a significant number of pending AMP decisions will be published in late January/early February, the NPMHU request that parties be given two-and-a-half months until mid-April to conduct discovery on these decisions is excessive in the extreme. NPMHU's desired case-by-case review of each and every aspect of each and every AMP decision serve primarily to advance the objective of delaying the issuance of an advisory opinion well beyond what is conceivably necessary for according due process necessary for review under section 3661.

In considering the PR (at page 4) and APWU (at page 2) proposals for rebuttal testimony, the Commission must decide whether a review process established primarily for the purpose of allowing it to offer a *non-binding qualitative* assessment of changes in the nature of service should be overshadowed by the desire of some to engage in protracted debate and the pursuit of perfection for such *quantitative* issues as:

- (a) determining the precise optimization model that should serve as the starting point upon which postal management relies to exercise its broad discretion and identify those mail processing facilities subject to the USPS Handbook PO-406 consolidation review process;⁸ and
- (b) estimating the cost, volume, revenue and contribution impacts that could result from the operational changes implemented in conjunction with service standard changes.

Yes, there is a quantitative (cost savings and revenue impact) tail attached to the qualitative change in the nature of service dog. However, for section 3661 to function as Congress intended and in a manner that permits the Commission to respond with

⁸ Contrary to the characterization of APWU at page 2 of its Comments, the optimization model described in USPS-T-3 was not used to "determine locations to consolidate." It was used by postal management to establish the areas of excess capacity as a starting point from which an iterative exercise of management judgment was applied to identify mail processing consolidation opportunities then made subject to the USPS Handbook PO-408 process, an established and vetted process used to determine which locations to consolidate.

any reasonable measure of expedition, the Commission must consider an approach to the advisory opinion process that ensures the dog wags the tail, and not vice versa.

At page 2, APWU argues for a need to present "an alternative direction for the network that better preserves service standards." However, the purpose of a section 3661 proceeding is for the Commission to respond with a non-binding advisory opinion regarding the specific service change proposal that **postal management** has submitted for review. Contrary to other forums in which APWU may be accustomed to operating, section 3661 dockets are not labor-management proceedings in which "both sides" or other interested parties present competing or alternative service change proposals for an arbitrator's consideration.

At page 4, the Public Representative asserts that it may seek to offer testimony reflecting an "assessment of the service impact on vulnerable members of the mailing public." Given the absence of any indication of what qualifies one for "vulnerable" status among mail users in relation to the service changes at issue, it is difficult for the Postal Service to comment on what form such an assessment could take or how quantitative it could be. Recent advisory opinion dockets have included investigation of the fact that change does not affect every customer equally; that unalterable conclusion will not change just as so-called "vulnerable" customers are likely to experience their vulnerability as an attribute of any change.

The Postal Service observes that in Docket No. N2010-1, ten calendar days were scheduled between the conclusion of oral cross-examination on its direct case and the filing of rebuttal testimony by intervenors (July 23 to August 2, 2010).⁹ In recent service

⁹ By premising certain scheduling proposals on the date Postal Service testimony formally becomes evidence, parties appear to assume, without interrogation, that preparation of their own direct or rebuttal

change dockets, parties seems to have generated rebuttal testimony covering a broad array of topics for the Commission's consideration, whether one characterizes that testimony as qualitative or quantitative. Accordingly, an interval similar to that scheduled for Docket No. N2010-1 seems appropriate in the instant docket. The parties have offered no basis for multiplying the Docket No. N2010-1 time interval by at least six in the current docket.

III. APWU Makes Too Much of the Word "Fully"

At page 4 of its Comments, APWU argues that the current network rationalization initiative could not be "fully" evaluated without an examination of the AMP studies the Postal Service is using to inform its network rationalization proposal. That assertion is literally true -- if one expects this docket to serve as a forum for fully evaluating every line of each facility-specific AMP consolidation proposal allowing exploration of each operational and personnel change. While that may well serve collateral APWU interests, it does not serve the Commission's interest of the purpose of the instant proceeding. As such, the Commission need not employ an electron microscope to *fully* explore every jot and tiddle of each AMP study before offering an informed opinion whether the proposed change in the nature of postal services conforms to applicable policies of title 39.

At page 5 of its Comments, the APWU observes that the Postal Service's Docket No. N2012-1 Request does not "fully" inform the Commission regarding "the impact of this initiative in conjunction with the previously presented and currently ongoing Postal

cases cannot commence sooner. While that may be true in proceedings that rely exclusively upon oral evidence, that is not true in expert proceedings such as those before the Commission. Such preparation can begin as soon as the written direct testimony is first filed. While subsequent discovery may provide additional illumination, the Commission would be wise to recognize when illumination commences.

Service initiatives." APWU then argues that the Docket No. N2012-1 Request fails to meet the requirements of Rule 74 until such time that the Postal Service produces testimony by a witness explaining the impact of the proposed changes in speed of mail delivery under review in the instant docket in combination with (1) potential retail facility closures reviewed in Docket No. N2011-1 (currently subject to an implementation moratorium) and (2) the proposed elimination of Saturday street delivery reviewed in Docket No. N2010-1 but currently precluded by legislative interdiction, and (3) price increases that might result from the inevitable resolution of Docket No. R2014-1.¹⁰ To the contrary, the Postal Service observes that its Docket no. N2012-1 Request, as completed by the direct testimony of its witnesses and supporting library references, meets the requirements of subsections (a) and (b) of Rule 74. The Request and supporting testimony in the current docket *fully*¹¹ inform the Commission of the nature, scope and significance of the proposed service changes and how, if implemented, those changes will affect postal customers.

The nature of the Docket No. N2011-1 and N2010-1 service changes have already been reviewed thoroughly by the Commission. No other service changes, whether previously litigated or not, are before the Commission in the instant docket. It is immaterial to the issues raised in the current docket if and when the previously litigated service changes are or ever will be implemented. APWU's call for additional

¹⁰ Ignoring the inconsistency, APWU chooses not to argue that the Postal Service should supplement its current Request with additional testimony explaining its inter-relationship with the currently pending Docket No. R2012-3 market dominant price adjustment.

¹¹ As that term may reasonably construed. The Postal Service does not request the Commission's advisory opinion on initiatives other than the one described in its direct case. While employee unions may wish that this proceeding be about other proposals, or other aggregations of proposals, or anything broader than what the actual Request entails, the statute does not afford them that right.

testimony does not establish a nexus between changes in delivery speed (the subject of Docket No. N2012-1) and changes in retail access (the subject of Docket No. N2011) or the elimination of Saturday street delivery (the subject of Docket No. N2010-1). Nor do they change or obscure the fact that witness Williams provides the necessary policy testimony in this docket. APWU is free to engage in appropriate limited discovery seeking to explore the existence of any material service-related connection between the nature of the previously litigated service changes and those under review in the instant docket, should the absence of any such connection somehow not already be patently clear. APWU is free to inquire through discovery whether the Postal Service has attempted to undertake the sort of service change inter-relationship analysis implied by its request for service change inter-relationship testimony.¹² However, the Docket No. N2012-1 Request is not deficient because it fails to incorporate the previously litigated service changes or to justify how implementation of previously litigated service changes in combination with the one currently under review would be consistent with the applicable policies of title 39 or impact customers.

Moreover, it is of no consequence relevant to Rule 74 that the Docket No. N2012-1 Request does not address the potential impact of implementing exigent price increases that might result from Docket No. R2010-4. If that were the case, the Commission's recent opinion in Docket No. N2011-1 would be rendered worthless and the whole of Docket No. N2010-1 would be reduced to a nullity by virtue of the

¹² The answer will be that it has not.

Commission's failure in each case to have considered the potential impact of exigent price increases.¹³

IV. Streamlined Access to Non-Public Materials

At page 6 of its Comments, APWU argues for a streamlined approach to permitting access non-public materials "in certain situations." At page 7, APWU provides an example involving the protection of facility finance numbers that, under the current rules, could work to prejudice its ability to expeditiously access non-public documents moving forward. Unless some aberration has occurred in an unspecified library reference, the APWU will observe in the instant docket that the Postal Service has abandoned its past (as recent as Docket No. N2011-1) practice of protecting facility finance numbers from public disclosure. Accordingly, the example provided by APWU

¹³ To say nothing of the Commission's review of the Docket No. N2006-1 service changes at the same time that the Docket No. R2006-1 rate request was pending.

does not help to illuminate the nature of any access problem that it may experience moving forward and makes it difficult for the Postal Service to know what to suggest in response. The Postal Service is willing to discuss informally with APWU any such concerns it may have, in order to explore the feasibility of mutually acceptable solutions.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Anthony F. Alverno, Jr.
Chief Counsel, Global Business

Michael T. Tidwell

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2998; Fax -5402
michael.t.tidwell@usps.gov
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